

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Pagnamenta	Team: Squad #2	CCRB Case #: 202000416	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/01/2020 1:15 PM	Location of Incident: 75th Precinct Stationhouse	Precinct: 75	18 Mo. SOL 7/1/2021	EO SOL 2/15/2022	
Date/Time CV Reported Wed, 01/01/2020 1:21 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/16/2020 10:58 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kerry Plawiak	18549	962017	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Douglas Ayres	01107	936160	075 PCT
2. LT Joshua Bienvenue	00000	945511	075 PCT
3. POM Joshua Ganshaw	08463	966072	075 PCT
4. POM Alec Solomito	03561	964782	075 PCT
5. LT Rajinder Singh	00000	935750	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kerry Plawiak	Abuse: Police Officer Kerry Plawiak threatened to arrest § 87(2)(b)	
B.POM Kerry Plawiak	Force: Police Officer Kerry Plawiak used physical force against § 87(2)(b)	
C.POM Kerry Plawiak	Abuse: Police Officer Kerry Plawiak interfered with § 87(2)(b)'s use of a recording device.	

Case Summary

On January 1st, 2020, § 87(2)(b) called the Internal Affairs Bureau and filed this complaint, generating IAB Log #2020-0757 (**Board Review 01**). IAB referred this case to the CCRB, where it was received on January 16th, 2020.

At approximately 1:15 p.m., on January 1st, 2020, § 87(2)(b) went to the 75th Precinct Stationhouse in order to make a complaint against her tenants. Inside the stationhouse § 87(2)(b) encountered Police Officer Kerry Plawiak of the 75th Precinct and spoke to him about ongoing issues with her tenants. Police Officer Plawiak told § 87(2)(b) he could not help her with her complaint and asked her repeatedly to leave the stationhouse. § 87(2)(b) refused to leave. Police Officer Plawiak told her she would be “trespassing” if she refused to leave the stationhouse and could be arrested (**Allegation A - Threat of Arrest**, § 87(2)(g)). Police Officer Plawiak then approached § 87(2)(b) and allegedly pushed her in her upper chest and left arm (**Allegation B – Physical Force**, § 87(2)(g)). § 87(2)(b) took out her phone, and Police Officer Plawiak told her she could not film in the stationhouse (**Allegation C - Interference with Recording**, § 87(2)(g)). Police Officer Plawiak then allegedly pushed § 87(2)(b) again by “nudging” her shoulder (**within Allegation B – Physical Force**, § 87(2)(g)). § 87(2)(b) exited the 75th Precinct’s stationhouse into its parking lot, followed by Police Officer Plawiak as well as Lieutenant Joshua Bienvenue, Police Officer Joshua Ganshaw, and Sergeant Douglas Ayres of the 75th Precinct. After a brief conversation with Sergeant Ayres about the complaint with her tenants, § 87(2)(b) left the stationhouse parking lot. § 87(2)(b) was not arrested or issued any summonses as a result of this incident.

Footage of the 75th Precinct stationhouse’s lobby and desk area were obtained and did not capture the incident. (The 75th Precinct front entrance area was under construction at the time of the incident and the footage obtained did not capture the back area of the stationhouse where the incident occurred) (**Board Review 02, 03, 04, and 05**). Body-worn camera (BWC) footage of § 87(2)(b)’s interaction with officers in the 75th Precinct stationhouse’s parking lot area was obtained from Lieutenant Bienvenue and Police Officer Ganshaw’s BWCs and is attached in IAs #78 and #79 (**Board Reviews 06 and 07**) and summarized in IA #82 (**Board Review 08**). The investigation did not obtain any BWC footage that captured the interaction inside the 75th Precinct stationhouse between Police Officer Plawiak and § 87(2)(b). However, the nature of the incident did not require the use of BWC as per the Patrol Guide.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kerry Plawiak threatened to arrest

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 7th, 2020 (**Board Review 09**). Lieutenant Bienvenue was interviewed at the CCRB on August 27th, 2020 (**Board Review 10**). Police Officer Ganshaw was interviewed at the CCRB on August 30th, 2020 (**Board Review 11**). Police Officer Plawiak was interviewed at the CCRB on September 14th, 2020 (**Board Review 12**). Sergeant Ayres was interviewed at the CCRB on September 15th, 2020 (**Board Review 13**).

The following facts are undisputed: On January 1st, 2020, at approximately 1:15 p.m., § 87(2)(b) went to the 75th Precinct Stationhouse to make a complaint against her tenants and encountered Police Officer Plawiak behind a desk at the rear entrance of the stationhouse. Police Officer Plawiak told § 87(2)(b) he could not help her with her civil complaint. After a brief verbal exchange, Police Officer Plawiak told § 87(2)(b) repeatedly to leave the stationhouse. § 87(2)(b)

did not leave, and Police Officer Plawiak approached § 87(2)(b) and told her that if she did not leave the stationhouse she would be “trespassing” and told her at least once that she would be subject to arrest if she did not leave. Police Officer Plawiak then made physical contact with § 87(2)(b) and § 87(2)(b) took out her phone. Police Officer Plawiak told § 87(2)(b) she could not film inside the stationhouse and told her to put her phone away. § 87(2)(b) became increasingly loud throughout her conversation with Police Officer Plawiak, and after the verbal exchange about her phone, Lieutenant Bienvenue, Police Officer Ganshaw, and Sergeant Ayres became aware of a “commotion,” and followed § 87(2)(b) as she exited out into the stationhouse parking lot. After a brief verbal interaction in the stationhouse parking lot with Sergeant Ayres and Lieutenant Bienvenue, § 87(2)(b) left.

§ 87(2)(b) stated that Police Officer Plawiak told her that he could not help her with her complaint against her tenants and when she asked to speak to his sergeant, Police Officer Plawiak responded that his sergeant would give her the same information. § 87(2)(b) repeated she wanted to speak to the sergeant and Police Officer Plawiak told § 87(2)(b) to leave the stationhouse. Police Officer Plawiak then got up from behind his desk and approached her and told her she needed to leave before he arrested her. § 87(2)(b) remained in the stationhouse and insisted that she wanted to talk to the sergeant and Police Officer Plawiak told her she was “trespassing.” § 87(2)(b) described her own voice in this interaction as “loud” and stated that she became “louder” as the incident progressed.

Police Officer Plawiak stated that he told § 87(2)(b) he could not help her with her specific civil complaint and that she needed to go through tenant-landlord court. § 87(2)(b) insisted that she wanted her tenants removed and Police Officer Plawiak told her that action was against the law and that there was nothing he could do for her. § 87(2)(b) then became “disorderly” and “erratic” by “raising her voice,” talking “over” Police Officer Plawiak, and not “listening” to his answers. Police Officer Plawiak told § 87(2)(b) she would need to leave the stationhouse if she was going to “keep acting up.” § 87(2)(b) told Police Officer Plawiak she was not going to leave, and Police Officer Plawiak replied that if she remained inside the stationhouse, she would be “trespassing.” Police Officer Plawiak told § 87(2)(b) that he had given her a “lawful order to leave,” as she had become “disorderly,” and that if she refused to leave, she would be “breaking a law,” for which she could be “arrested.”

Lieutenant Bienvenue, Police Officer Ganshaw, and Sergeant Ayres’ § 87(2)(g) and all three stated that they did not see most of the interaction between Police Officer Plawiak and § 87(2)(b) inside the stationhouse, and only became independently aware of the incident because they heard § 87(2)(b) yelling. They walked towards the “commotion,” as § 87(2)(b) was exiting the stationhouse into its rear parking lot area.

Lieutenant Bienvenue and Police Officer Ganshaw’s BWCs reflect the same events § 87(2)(g) Police Officer Ganshaw’s BWC started filming inside the stationhouse a few seconds prior to Lieutenant Bienvenue’s BWC, however the audio in Lieutenant Bienvenue’s BWC begins immediately.

Lieutenant Bienvenue’s BWC begins as approximately four uniformed police officers walk out of the doors of the 75th Precinct stationhouse and into its rear parking lot area. At runtime 00:02, both Police Officer Plawiak and § 87(2)(b) stand outside in the parking lot, in the doorway of the stationhouse doors, and Police Officer Plawiak is heard telling § 87(2)(b) “Miss, step off the property. You will get arrested if you don’t.” At 00:09, § 87(2)(b) is heard repeatedly asking to speak to a sergeant and is approached by Sergeant Ayres. At 00:33, after § 87(2)(b) explains her tenant situation to Sergeant Ayres, Sergeant Ayres asks her, “Aside from the way you are

screaming at me, what can I do as a police officer?” Throughout Lieutenant Bienvenue’s BWC, the volume of § 87(2)(b)’s voice becomes increasingly elevated. At 00:49, § 87(2)(b) yells, “Enough! Enough! I haven’t had any sleep. When I haven’t had any sleep, I am fucking irrational. Okay? Send me back home and watch.” After Lieutenant Bienvenue asks § 87(2)(b) if she would like to go to the hospital, § 87(2)(b) answers, “No, I fucking don’t. I want them to stop the fucking noise,” and then walks out of the stationhouse parking lot.

According to N.Y.S. Penal Law, Section 140.00, a person remains unlawfully in a premise when they defy a lawful order not to remain, personally communicated to them by the owner of such premises or other authorized person. N.Y.S. Penal Law, Section 140.05 adds that the violation of trespass occurs when one knowingly enters or remains unlawfully in or upon premises (**Board Review 14**).

In People v. Reape, 868 N.Y.S.2d 497 (2008), the courts discussed the trespass statute’s applicability to an NYPD Precinct stationhouse. Though an individual has the license and privilege to remain on premises that are open to the public, they can be lawfully ordered to leave by an authorized person. The court states that the license to remain on municipal or state property that is generally open to the public can be regulated to prevent interference with the ordinary use of the property by other members of the public with an equal right of access (**Board Review 15**).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation (B) Physical Force: Police Officer Kerry Plawiak pushed § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b) stated that after Police Officer Plawiak had told her she could be arrested for “trespassing,” Police Officer Plawiak had approached her and pushed her in her upper chest and left arm, which had caused her to “stumble” backwards. After Police Officer Plawiak pushed her, § 87(2)(b) told him, “Oh my god, I can’t believe you just pushed me” and “Do not touch me.” Police Officer Plawiak then pushed § 87(2)(b) a second time in the stationhouse by “nudging” her shoulder. § 87(2)(b) was not bruised or injured as a result of Police Officer Plawiak’s physical contact with her.

Police Officer Plawiak stated that he did not recall pushing § 87(2)(b). However, when § 87(2)(b) refused to leave the stationhouse, he put his right arm outwards in order to try and “guide” her out. Police Officer Plawiak explained that he had been trying to close off any direction to § 87(2)(b) “except for out the door.” Police Officer Plawiak did not recall if his right hand had come

into contact with any parts of § 87(2)(b)'s arm. Police Officer Plawiak stated that when he had tried to "guide" § 87(2)(b) out by opening the stationhouse doors, § 87(2)(b) might have stopped in front of the doors, at which point Police Officer Plawiak might have "touched" the area around her elbow. Police Officer Plawiak stated that he did not recall making physical contact with § 87(2)(b) more than once during their interaction.

Lieutenant Bienvenue, Police Officer Ganshaw, and Sergeant Ayres' did not see Police Officer Plawiak make physical contact with § 87(2)(b).

As previously discussed, the BWC footage obtained for this incident begins after the point in the incident when this allegation occurred.

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Kerry Plawiak interfered with § 87(2)(b)'s use of a recording device.

It is undisputed that § 87(2)(b) took her phone out in the stationhouse and that Police Officer Plawiak told her she could not record in the stationhouse.

§ 87(2)(b) stated that after Police Officer Plawiak allegedly pushed her, she took out her phone from her pocket, with the intention of calling Internal Affairs, and that Police Officer Plawiak then raised his voice and told her she could not take pictures or record and that she needed to put her phone away and leave the stationhouse.

Police Officer Plawiak stated that § 87(2)(b) took her phone out in the stationhouse and he told her that it was "illegal" to film in a stationhouse. § 87(2)(b) told Police Officer Plawiak that she was not "filming," that she was making a phone call. Police Officer Plawiak told § 87(2)(b) that he could not speak to whether she had or had not been filming and explained to her that she was not "allowed" to film inside a police precinct.

NYPD Patrol Guide Procedure 203-29 states that "Members of the public are not allowed to photograph and/or record police activity within Department facilities. Members of the service may order any member of the public who is photographing or recording within Department facilities to stop such activity" (**Board Review 16**).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two previous CCRB complaints and has been named a victim in six allegations (**Board Review #17**).

- § 87(2)(b)

- § 87(2)(b) [REDACTED]
- Police Officer Kerry Plawiak has been a member of service for four years and has been a subject in two other CCRB complaints and three other allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- Tyshaieka § 87(2)(b) [REDACTED] rejected mediation.
- According to the New York City Office of the Comptroller, no Notice of Claim had been filed regarding this incident as of September 30th, 2020 (**Board Review #18**).
- According to the Office of Court Administration (OCA), § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] has no history of convictions in New York City (**Board Review #19**).

Squad No.: 2

Investigator: <u>Julia Pagnamenta</u>	Inv. <u>Julia Pagnamenta</u>	<u>10/14/2020</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Alexander Opoku-Agyemang</u>	IM <u>Alexander Opoku-Agyemang</u>	<u>10/15/2020</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date